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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

ROBERT V. KVASSAY, as Trustee,
etc.,

Plaintiff and Respondent,

v.

RICHARD S. KVASSAY et al.,

Defendants and Appellants.

B288555

(Los Angeles County
Super. Ct. No. BP122477)

APPEAL from orders of the Superior Court of Los Angeles
County. Maria E. Stratton, Judge. Affirmed.

Troy A. Stewart for Defendants and Appellants.

Matthew C. Brown for Plaintiff and Respondent.

In this most recent appeal in a long-running dispute between Robert Kvassay and his brothers, Peter Kvassay and Richard Kvassay,¹ Peter and Richard appeal from the trial court's January 5, 2018 orders authorizing Robert, as trustee of the Kvassay Family Trust (the trust), to sell trust property located at 1554 Hill Drive in Los Angeles, California (the property) and to use sale proceeds to pay off a loan encumbering the property. We affirm the trial court's orders.

BACKGROUND

On September 20, 2010, the trial court issued a written order authorizing Robert as trustee to make repairs to the property and to list it for sale, and ordering the property "to be sold by Court confirmation." Robert repaired the property and on December 4, 2017, filed an ex parte application for an order authorizing the sale of the property to a prospective buyer.

After a December 20, 2017 hearing on Robert's ex parte application, the trial court issued a written order dated January 5, 2018, authorizing Robert, as trustee of the trust, to sell the property to Christopher R. Hardwick or his assignee, Pinniped Manor, LLC, a California limited liability company, on the terms and conditions set forth in the parties' purchase and sale agreement and amended joint escrow instructions and to execute any documents necessary to consummate the sale. The trial court also ordered Robert to post a bond in the amount of \$3.9 million.

On January 3, 2018, Robert filed an ex parte application for an order authorizing him to use proceeds from the sale to pay off

¹ Because the parties share the same surname, we refer to them by their first names to avoid confusion. Peter and Richard are sometimes collectively referred to herein as appellants.

a \$1,393,091.60 loan encumbering the property (the loan). That loan encumbrance was the result of unauthorized actions by Richard and Peter in June 2007 when they obtained, on behalf of the trust and without Robert's knowledge, a \$1.5 million loan secured by a deed of trust on the property.² \$973,520 of the loan proceeds was not used for the benefit of the trust, but was taken by Richard and Peter. This court previously affirmed the trial court's ruling that the trust could recover the \$973,520 by recouping that amount from Peter's and Richard's distributive shares from the trust. (*Kvassay v. Kvassay* (Aug. 5, 2015, B250855) [nonpub. opn.])

When Robert discovered the existence of the loan, it was already in risk of default. He refinanced the debt and began servicing the refinanced loan with his own funds. Richard and Peter both filed chapter 7 bankruptcy petitions and were discharged of personal liability for the loan.

After a January 5, 2018 hearing on Robert's second ex parte application, the trial court issued a written order authorizing Robert to pay off the loan as a legitimate obligation of the trust.

This appeal followed.

DISCUSSION

I. Order authorizing sale of the property

Appellants contend the trial court's order granting Robert's ex parte application to sell the property denied them due process because Robert should have been required to file a separate

² We granted Robert's motion for judicial notice of the May 31, 2019 bankruptcy judgments, orders and findings of fact filed in Peter's and Richard's respective bankruptcy cases.

petition under Probate Code section 17201³ and to provide them with proper notice under section 17203.⁴

Appellants were not denied due process. The issue of Robert's authority to sell the property was adjudicated in a prior proceeding in which appellants had both notice and the opportunity to be heard. That proceeding, commenced in May 2010 when Robert filed a petition for specific powers to evict Peter and Richard from the property and to sell the property, culminated in a September 20, 2010 court order authorizing the sale of the property. The trial court in this case had the authority to enforce its September 20, 2010 order. (See Prob. Code, § 800.) The filing of a separate petition was not necessary for the court to exercise that authority.

We reject appellants' unsupported argument, raised for the first time in their reply brief, that the trial court determined in July 2013 that Robert's May 7, 2010 petition for approval to sell the property was "moot," thereby rendering moot the September

³ Probate Code section 17201 provides: "A proceeding under this chapter is commenced by filing a petition stating facts showing that the petition is authorized under this chapter. The petition shall also state the grounds of the petition and the names and addresses of each person entitled to notice of the petition."

⁴ Probate Code section 17203, subdivision (a) governs notice of hearings on a petition and requires the petitioner to mail to the beneficiaries, at least 30 days before the date of the hearing on the petition, a notice of hearing on the petition.

20, 2010 order authorizing the sale.⁵ Even if the trial court subsequently found Robert’s previously adjudicated petition to be moot, that finding neither voids nor invalidates the September 20, 2010 order authorizing the sale.

II. Use of sale proceeds to pay loan debt

We reject appellants’ contention that the order authorizing Robert to use proceeds from the sale of the property to pay off the loan must be reversed because the trust is not liable for the loan debt, which was extinguished by the discharge granted in their respective chapter 7 bankruptcy actions. We rejected a similar argument appellants raised in a prior appeal in which there was evidence that in 2007 Richard directed Peter to sign, as the purported trustee of the trust, a \$1.5 million promissory note and a deed of trust encumbering the property. Robert, and not Peter, was the only trustee authorized to bind the trust at the time the loan was made. (*Kvassay v. Kvassay, supra*, B250855) [appellants’ contentions that the trust is not obligated as a borrower on the loan or required to repay any portion of the loan “border on the frivolous”].) It is undisputed that a deed of trust securing the loan encumbers the property and that the loan was obtained by appellants’ unauthorized acts. There is no evidence that the bankruptcy discharges granted to Richard and Peter individually extinguished the trust’s liability on the loan.

⁵ We denied appellants’ procedurally improper request that we take judicial notice of documents filed in prior probate court proceedings or in prior appeals that were not part of the record and were not provided to the court (Cal. Rules of Court, rule 8.252(a)(3)), and disregard contentions based on those documents raised by appellants in their briefs and during oral argument.

Moreover, the scope and effect of appellants' respective bankruptcy discharges on Robert's administration of the trust is an issue that was previously adjudicated by the bankruptcy court in Robert's favor. On May 31, 2018, the bankruptcy court adjudicated summary judgment motions filed by Robert individually and as trustee of the trust against Peter and Richard. The bankruptcy court entered judgments against Peter and Richard declaring, among other things, that their respective bankruptcy discharges did not prohibit Robert from paying trust administration expenses from trust assets; from seeking and receiving reimbursement from the trust for trust administration expenses paid by him from non-trust funds; from seeking damages against Peter and Richard for any obligations, expenses or liabilities arising after their respective petition dates; or from recouping from Peter's and Richard's share of the trust residue any obligations owed by Peter and Richard to the trust, to the extent those obligations arose out of their acts that caused damage to the trust. On February 11, 2019, the United States Bankruptcy Appellate Panel for the Ninth Circuit affirmed the bankruptcy court's judgments entered against Peter and Richard.⁶ The bankruptcy court judgments, as affirmed by the Ninth Circuit Bankruptcy Appellate Panel, make clear that the discharge orders entered in Peter's and Richard's respective

⁶ We granted Robert's May 6, 2019 motion for judicial notice of bankruptcy court documents, including the Ninth Circuit Bankruptcy Appellate Panel's nonpublished February 11, 2019 slip opinion affirming the May 31, 2018 judgments entered against Peter and Richard. (*In re Kvassay* (9th Cir. BAP) Feb. 11, 2019, CC-18-1148-TaFKu) 2019 Bankr. LEXIS 373.)

bankruptcy actions do not preclude Robert from using trust assets to pay off the loan.

DISPOSITION

The trial court's January 5, 2018 orders are affirmed.
Robert is awarded his costs on appeal.

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_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
HOFFSTADT